

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF LABOR AND INDUSTRY

In the Matter of Brandon
Nicolas Williamson,
individually, and d/b/a BNW
Corporation

**ORDER DENYING
MOTION FOR DEFAULT**

This matter is before Administrative Law Judge Richard C. Luis on the Department of Labor and Industry's motion requesting a default order against BNW Corporation. The Department of Labor and Industry filed its motion on April 8, 2010. No response has been received from or on behalf of BNW Corporation. On April 15, 2010, a clarifying letter was received from counsel for Brandon Williamson. No hearing was held on the motion. The motion record closed on April 15, 2010, upon receipt of counsel's letter.

Brian P. Farrell, Esq., Brian P. Farrell, P.A., P.O. Box 1293, Maple Grove, MN 55311, represents Brandon Nicolas Williamson, individually, and d/b/a BNW Corporation (Williamson). Christopher M. Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, represents the Department of Labor and Industry (Department or DOLI). No appearance was made on behalf of BNW Corporation, Inc. (BNW).

Based on all the files, records, and proceedings herein, and for the reasons set forth in the accompanying Memorandum, the Administrative Law Judge makes the following:

ORDER

The Department's Motion for a Default Order against BNW Corporation, Inc. is DENIED.

Dated: May 14, 2010

/s/ Richard C. Luis

RICHARD C. LUIS
Administrative Law Judge

MEMORANDUM

On December 21, 2009, DOLI issued an Administrative Order (December Order) citing “Brandon Nicolas Williamson, individually, and d/b/a BNW Corporation” for a number of violations of Minn. Stat. Chap. 326B. The December Order did not name BNW Corporation, Inc. as a respondent in the proceeding. The only references to BNW Corporation, Inc. were as an assumed name that Williamson was using in doing business individually. According to the cover letter, the December Order was mailed to Brandon N. Williamson at an address in Wyoming, Minnesota.¹ There is no indication that service of the December Order was made upon BNW Corporation, Inc.

Williamson requested a hearing on January 19, 2010. The Respondent’s Request for Hearing expressly identified “Brandon Nicolas Williamson, individually, and d/b/a BNW Corporation” as the individual requesting a hearing. No request was made on behalf of BNW Corporation, Inc.²

DOLI issued a Notice and Order for Prehearing Conference (Notice and Order) on January 28, 2010, captioned “In the Matter of Brandon Nicolas Williamson, individually, and d/b/a BNW Corporation.” Service of the Notice and Order was made on Brandon N. Williamson, BNW Corporation, at the address in Wyoming, Minnesota and on counsel for Williamson.³ The Notice and Order contained the following statement:

Respondents’ failure to appear at the hearing or any prehearing conference, or any failure to comply with an order of the Administrative Law Judge, may result in a finding that Respondents are in default, that the Department’s allegations contained in this Notice and Order may be accepted as true, and its proposed action be upheld.⁴

A prehearing conference was held in this matter on March 23, 2010. At this conference, counsel clarified that his client was Williamson individually, whether in his own name or d/b/a BNW Corporation. No appearance was made on behalf of BNW Corporation, Inc.

The Department has moved for a default order against BNW Corporation, Inc. The Department contends that BNW Corporation, Inc. has failed to make an

¹ See Notice and Order for Prehearing Conference, attached December Order.

² See Notice and Order for Prehearing Conference, attached Respondent’s Request for Hearing.

³ See Notice and Order for Prehearing Conference, attached Respondent’s Request for Hearing.

⁴ Notice and Order for Prehearing Conference, at 3.

appearance in this proceeding and therefore is in default under the terms of the Notice and Order.

Notice Required for Jurisdiction

The fundamental basis for jurisdiction is notice upon the person against whom an action is proposed. As the Minnesota Court of Appeals has stated, “If service of process is invalid, the district court lacks jurisdiction to consider the case, and it is properly dismissed.”⁵ Whether a summons and complaint is properly served is a jurisdictional question of law.⁶

In this matter, the person purportedly in default is a corporation. A threshold issue is whether the corporation was notified properly that it was to be a Respondent in this action. In this instance, notification consists of two separate requirements. One requirement is that the corporation be named in the proceeding to provide adequate notice of the conduct complained of by DOLI. The other is that appropriate service be made on the corporation.

Requirement for Naming the Corporation as a Respondent

In this matter, DOLI named the Respondent as “Brandon Nicolas Williamson, individually, and d/b/a BNW Corporation.” Williamson, as an individual, is clearly named as the Respondent. The acronym d/b/a, “doing business as,” is the reference to the use of an assumed name. The acronym d/b/a does not name a separate business entity. In describing a similar situation, the Minnesota Court of Appeals noted:

In preparing to file suit against M.O.S.S., Inc., counsel for Northland checked with the secretary of state’s office and was unable to find a Minnesota corporation registered under the name “M.O.S.S., Inc.” Northland therefore filed a complaint against “Anthony Turpin and Tim Turpin, d/b/a M.O.S.S.” Northland did not include M.O.S.S., Inc. as a defendant.⁷

The description of Respondent in this proceeding as “Brandon Nicolas Williamson, individually, and d/b/a BNW Corporation,” does not name BNW Corporation, Inc. as a party. This failure to name BNW Corporation, Inc. constitutes a failure of notice that renders the ALJ without jurisdiction to find that entity in default in this proceeding.

Requirement for Serving the Corporation

⁵ *Leek v. Am. Express Prop. Cas.*, 591 N.W.2d 507, 509 (Minn. App. 1999) (citations omitted), *rev. denied* (Minn. July 7, 1999).

⁶ *Amdahl v. Stonewall Ins. Co.*, 484 N.W.2d 811, 814 (Minn. App. 1992), *rev. denied* (Minn. July 16, 1992); *see also McBride v. Bitner*, 310 N.W.2d 558, 563 (Minn. 1981).

⁷ *Northland Temporaries, Inc. v. Turpin, et al.*, A06-2201 (Minn. App. February 5, 2008) (<http://www.lawlibrary.state.mn.us/archive/ctappub/0802/opa062201-0205.pdf>).

The statutory requirements for effective service of process on a corporation are set out in Minn. Stat. § 5.25, which states in part:

Subdivision 1. Who may be served. A process, notice, or demand required or permitted by law to be served upon an entity governed by chapter 221, 302A, 303, 317A, 321, 322B, 323, 330, 540, or 543 may be served on: (1) the registered agent, if any; (2) if no agent has been appointed then on an officer, manager, or general partner of the entity; or (3) if no agent, officer, manager, or general partner can be found at the address on file with the secretary of state, the secretary of state as provided in this section.

There is no indication by way of proof of service that the person actually receiving the December Order or the Notice and Order is a person meeting the requirements of Minn. Stat. § 5.25. Even if that person is one of those who is eligible to receive service on behalf of the corporation, the failure to name the corporation is not cured by such service.⁸

Waiver

An argument could be made that Williamson's participation in this proceeding constitutes a waiver of objection to jurisdiction over BNW Corporation, Inc. The Minnesota Court of Appeals has addressed the question of when the insufficiency of service is waived, stating:

The defense that there was insufficient service of process "is waived (1) if omitted from a motion in the circumstances described in Rule 12.07, or (2) if it is neither made by motion pursuant to this rule nor included in a responsive pleading or an amendment thereof." Minn. R. Civ. P. 12.08(a). The supreme court has ruled that the defense of insufficiency of service of process may, in addition to rule 12.08, be waived by implication. *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 868 (Minn. 2000). "[A] party who takes or consents to any step in a proceeding which assumes that jurisdiction exists or continues" waives the defense of insufficiency of service of process. *Galbreath v. Coleman*, 596 N.W.2d 689, 691 (Minn. App. 1999) (quotation omitted). A party that takes "some affirmative step" waives the defense; examples of actions constituting such a waiver "include (1) obtaining extensions of time within which to move or answer; (2) filing a motion to compel arbitration; (3) appealing a denial of a motion; and (4) obtaining

⁸ See *Keystone Building Systems, Inc. v. Skarphol Construction Group, Inc., et al.*, A03-1649 (Minn. App. May 18, 2004) (<http://www.lawlibrary.state.mn.us/archive/ctapun/0405/opa031649-0518.htm>).

court approval of a bond.” *Igo v. Chernin*, 540 N.W.2d 913, 914 (Minn. App. 1995) (quotation omitted).⁹

There has been no affirmative participation in this proceeding by BNW Corporation, Inc. There has been no waiver of the requirement for sufficient service to name BNW Corporation, Inc. as a party to this proceeding.

Conclusion

DOLI did not name BNW Corporation, Inc. as a defendant in this proceeding. This results in there being no jurisdiction to issue a Default Order against that entity. Thus, it is appropriate to deny the Department’s Motion.

R.C.L.

⁹ *Case Credit Corporation v. Magnum Resources, Inc. et al*, , A03-1734 (Minn. App. September 13, 2004) (<http://www.lawlibrary.state.mn.us/archive/ctapun/0409/opa031734-0913.htm>).